IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 561 OF 2005

Shamrao Tukaram Chougule (Yadav) ... Appellant

V/s

Vilas Bajirao Chougule (Yadav) & ors. ... Respondents

Mr. P.R. Arjunwadkar for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 17TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Islampur, dated 13.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Islampur dated 2.5.1998 dismissing the plaintiff's suit for possession and consequential relief of perpetual injunction against the defendants.

2. I have heard the learned counsel for the appellant. Perused the record.

3. It is seen from the record that the plaintiff filed

the suit on the basis of adverse title to the suit property as against the true owner defendant on the ground that plaintiff was in possession of the suit property for more than 12 years and hence it perfected the title and hence perpetual injunction was sought for against the true owner i.e. the defendant.

4. The defendant contested the suit on various grounds inter-alia denying the plaintiff's possession in the suit property and sought dismissal of the suit.

5. The learned Trial Judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiff had failed to prove his ownership to the suit property by adverse possession and it was also held that he was not entitled for perpetual injunction.

6. The appeal was carried to the District Court, Islampur. The learned Addl. District Judge, after hearing both parties, confirmed the findings recorded by the Trial Court and dismissed the appeal and hence the present appeal.

7. At the outset, it is to be noted that there is

absolutely no substantial question of law involved in this appeal. Essentially, the suit is based on the allegation that the plaintiff has become owner by
adverse possession and for consequential relief of perpetual injunction against the true owner of the property. Essentially, the allegations in respect of the adverse possession are issues of fact and there cannot be any issue of law, leave aside, the substantial question of law involved in this case. The learned counsel for the appellant submitted that both the Courts
had recorded concurrent findings to the effect that he had not proved his ownership by adverse possession, however, it was sought to be urged that he was in "settled possession" in the property in the sense that he was in possession of the property since the year 1949 and, therefore, it was submitted that his possession should not be disturbed without due process of law. However, in this appeal, there is no question of recording the finding whether the plaintiff is in settled possession or not as its adjudication is not sought for nor such issue was raised in both the Courts below and, therefore, it cannot be considered for the first time at the time of admission of the second

appeal. In view of this position and the fact that no substantial question of law is involved in this appeal,

the appeal has no merit and stands dismissed with no order as to costs. Consequently, Civil Application No. 991 of 2005 also stands dismissed with no order as to costs.

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